

PAMELA M. BROWER

IBLA 76-556

Decided September 8, 1976

Appeal from a decision of the Idaho State Office, Bureau of Land Management, denying an application for an extension of time for filing a desert land entry final proof and canceling the entry.

Affirmed.

1. Desert Land Entry: Extension of Time

An application for an extension of time for the submission of final proof of a desert land entry is properly rejected where the entrywoman is unable to show that her failure to reclaim the land in her entry within the statutory life of the entry is due, without fault on her part, to unavoidable delay in the construction of irrigation facilities intended to convey water to the entry, and where it appears, rather, that the failure was the result either of the lack of financing, lack of diligence in carrying out the development work, or lack of foresight in anticipating the burden of doing the work. A second extension of time to file final proof on the entry is properly denied to an entrywoman who fails to show that she utilized a first extension in a reasonable effort to accomplish the development work.

2. Desert Land Entry: Cancellation

A desert land entry is properly canceled when the statutory life of the entry, including an extension that was granted, has expired without reclamation and cultivation of the entry, as required under the desert land law, and the entrywoman fails to show that she is entitled to a further extension of time to complete the requirements of the desert land law.

APPEARANCES: Pamela M. Brower, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Pamela M. Brower has appealed from a decision by the Idaho State Office, Bureau of Land Management, dated March 2, 1976, denying her application for a second extension of time in which to make final proof on her desert land entry I-2426, and canceling the entry because the time for making final proof expired on September 17, 1975.

Mrs. Brower's entry was allowed on March 17, 1970, for 320 acres in sections 22, 23, and 27, T. 1 N., R. 34 E., B.M., Idaho, with final proof due not later than 4 years from the date of allowance, or March 17, 1974. 43 U.S.C. § 329 (1970); 43 CFR 2521.6(2).

Mrs. Brower's plan for development of the entry, which was the basis for its allowance, shows that her irrigation water would be obtained from three different wells, each of which would be drilled on the entries of three other members of her family who are identified as Connie Brower, I-2424, Jerry W. Brower, I-2425, and Ivan J. Brower, I-2624. The plan involved a joint irrigation system to serve the four entries.

Mrs. Brower relied on her son, Jerry Brower, to handle all matters pertaining to the entry for her.

On March 11, 1974, the entrywoman filed a request for an extension of time for a period of 3 years to make final proof on the entry. As a result, the Idaho State Office extended the time for a period of 18 months, or until September 17, 1975, as authorized by the Act of March 28, 1908, 43 U.S.C. § 333 (1970).

On September 12, 1975, Mrs. Brower filed a request for an additional extension of 24 months in which to make her final proof, pursuant to the Act of April 30, 1912, 43 U.S.C. § 334 (1970), for substantially the same reasons as given in her first request. She alleges that part of the entry is to be irrigated from other wells which have not been completed; that annual proof in the amount of \$ 1,000 has been completed on one well plus clearing land, surveying, and plowing; that \$ 8,200 has been paid to Idaho Power Company for power lines that have been partially extended to the well; and that a deposit of \$ 5,000 has been made to Silver Creek Supply of Picabo, Idaho, on an irrigation system.

Based upon a report of field inspection in October 1975 and an investigation by the BLM District Office, Idaho Falls, the Idaho State Office made the following findings in its decision of March 2, 1976:

1. Approximately 150 acres of the entry was brush beaten several years ago. An inspection of the lands now shows this area has been reinvaded by native vegetation and there is no evidence or indication of any activity on the entry.

2. On March 24, 1969, Jerry Brower entered into a contract with the Doug Cushman Drilling Company of Blackfoot, Idaho, to drill two wells, one to be located on his entry and the other on the entry of Connie Brower. However, contact with Mr. Cushman reveals that the contract was voided because Mr. Brower could not meet the financial commitment for a down payment of \$ 1,500 as provided in the contract. The wells were never drilled for this reason. Mr. Cushman advised that Jerry Brower was the only party with whom he dealt.

3. Pursuant to a contract entered into between Jerry Brower and the Barrus Drilling and Pump Co. of Basalt, Idaho, for the drilling of two wells, one well was drilled on Mr. Brower's entry. Mr. Barrus advises that Mr. Brower paid him \$ 1,000 for the well casing only but failed to produce any additional money for payment of the drilled well. He advised he still has not been paid and that he refuses to do any further drilling for the Browsers until he has been paid in full for the one drilled well. He also advised that he had no agreement to drill any wells on the entries of Pamela or Ivan Brower.

4. Contact with Mr. Gordon Eccles, owner of Silver Creek Supply, verified that Jerry Brower had made a down payment of \$ 5,000 about a year ago on a 600 horsepower pump. However, Mr. Eccles advised that he has not heard from Mr. Brower for quite some time and that he must pay an additional \$ 50,000 cash before Mr. Eccles will install the pump. Mr. Eccles also advised that no other irrigation equipment was involved and that Jerry Brower was the only party with whom he had dealt.

5. Mr. Glen Lake, a representative for Idaho Power Company at Blackfoot, Idaho, was contacted and he verified that Jerry Brower had made a payment of \$ 8,200 to have a power line extended to his entry. However, he advised that this was only a partial payment of a total cost of approximately \$ 13,000 to extend the line. He also advised that his company stopped work on extending the line when they learned that Mr. Brower could not finance the installation of the pump to which their power line was to be extended and no further work will be done until the pump is in place. He also advised that Jerry Brower was the only party with whom the company dealt.

The decision added:

In the related case of Ivan J. Brower, I-2624, who has also requested an extension of time, it was stated that Volmers Well Drilling was supposed to drill a well for Connie Brower and Ivan Brower had hoped to have them drill his well while they were in the area. However, he states that they never drilled the well for Connie Brower.

Mr. Ken Volmer, owner of Volmer's Well Drilling at Aberdeen, Idaho, was contacted. He advised that "Jerry or one of the family" had contacted him in an attempt to have several wells drilled on the desert land entries. However, he refuted the contention of Ivan Brower that a well was supposed to be drilled for Connie Brower, and perhaps also him. Mr. Volmer advised that at the time of initial contact with the Browsers, he informed them that his company was completely tied up with the Teton Dam Project and would be unavailable to drill any wells for them.

From these findings the Idaho State Office concluded that the lack of financial resources was the real reason why the wells had not been drilled, and that it, therefore, cannot be construed that the failure to reclaim and cultivate the land was due to no fault on the part of the entrywoman, citing regulations 43 CFR Subpart 2522. It, therefore, denied the request for an extension of time, and also cancelled the entry because the final proof date expired on September 17, 1975, and it was considered clear beyond any doubt that she could not possibly submit acceptable final proof, citing James T. Fulton, A-28475 (December 5, 1960); Bessie Brown, A-29100 (December 10, 1962).

In her appeal, Mrs. Brower stated that she had told Jerry Brower, at the time he was trying to secure someone to drill the well, that she had money available in the Blackfoot Teachers Credit Union and in a savings account at Idaho Bank and Trust to make the down payment or completely pay for the drilling, if necessary, and the money is still available. She enclosed copies of checks drawn by Jerry Brower, together with a statement by him.

In his statement, Jerry Brower was critical of the Bureau and characterized its investigation as "probably all fabrication," stating its major part was to inform all people involved that "The Browsers" lack adequate financing. He stated that at one time they had applied to the Water Resources Board for a loan, and that the possibilities of getting it looked good, but that after several years it was dropped for lack of action on the entry. He contends that the whole problem has been well drilling and not financing. He then made the following verbatim responses to the findings of fact hereinabove quoted from the Bureau's decision:

1. An inspection of the lands (when the snow has melted) will show that approximately 100 acres * * * of land was worked last year, disc-plowed and brushed. Note: This could not have been done since the decision was made since the ground was covered with over a foot of snow and is just now melting off. * * *
2. Although proof is hard to furnish, the reliability of Mr. Cushman should [be] obvious. The money for the down payment on the contract was available. He claimed he had a contract which he couldn't complete in time to drill our wells and it would be better if we could find someone else. * * *

3. The agreement with Mr. Barrus was \$ 600.00 down, \$ 400 in April of 1970 and the balance out of the first crop, also he took over the well starte [sic] by Richard Webb.

In November 1973 he was given an additional \$ 1000.00 above the agreed down payment. Also, in August 1973 a check of \$ 1802.17 was paid for casing for the well. (The check was given to Lamar Barrus even though it was made out to the supplier and was the total cost of the casing).

As for his drilling further wells - I doubt if we could get enough extensions of time to provide for his approximate four (4) years of drilling time for each well.

4. The contract with Silver Creek Supply states: \$ 5000.00 down at time of order, balance when installed. Mr. Eccles told me he had been contacted twice by BLM and each time BLM told him that the additional money had to be paid first, although Mr. Eccles explained it wasn't so.

5. The contract with Idaho Power shows that your information is incorrect. I was present in the Idaho Power Office while they called BLM in Idaho Falls and told them it was not necessary that the pump be in place before they extend the line to the Entry. There is no other money due on the contract except for power use.

Both the Act of March 28, 1908, 43 U.S.C. § 333 (1970), under which the first extension was granted, and the Act of April 30, 1912, 43 U.S.C. § 334 (1970), under which the pending request was filed, provide that an extension may be granted, in the discretion of the Secretary, if it is shown to his satisfaction that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the entryman is, without fault on his part, unable to make proof of the reclamation and cultivation of such land within the time limited therefore. The pertinent regulations repeat the statutes. 43 CFR 2522.3, and 2522.4(a).

We find that appellant has not demonstrated any reasons why she should be entitled to another extension.

While appellant relied entirely on her son, Jerry Brower, to make arrangements for all development work on the entry, it does not appear that she made any effort to follow through and see that the work was done. Nor is it apparent that Jerry Brower made any concerted or sustained attempts to have the necessary development work accomplished.

[1] An application for an extension of time for the submission of final proof of a desert land entry is properly rejected where the entrywoman is unable to show that her failure to reclaim the land in her entry within the statutory life of the entry is due, without fault on her part, to unavoidable delay in the cultivation and construction of irrigation works. Elaine S. Stickelman, 9 IBLA 327 (1973); Charles T. McCormack, A-30717 (June 30, 1967); Mathilda L. Battilana, A-30558 (Aug. 2, 1966); Paul I Kochis, A-30427 (Oct. 26, 1965). A second extension of time to file final proof is properly denied to an entrywoman who fails to make use of the first extension granted to her because of unavoidable delay. Elaine S. Stickelman, *supra*; Wayne E. Bright, A-30475 (February 4, 1966).

In the statement of reasons which accompanied his mother's appeal, Jerry Brower states that the whole problem has been inability to get wells drilled and not lack of adequate financing as was indicated in the decision rejecting the application for extension of time as the apparent reason for the failure to do the necessary development work. However, the findings in the investigation report indicate either that the Browsers did not have the necessary financing or that they just failed to pay the well drillers and equipment suppliers what they asked for. Jerry Brower himself lends some credence to the "lack of financing" conclusion in his statement that at one time they had applied to the Water Resources Board for a loan but that it was dropped after several years for lack of action on the entry. Nevertheless, whether the failure to do the work was due to a lack of financing or otherwise, the tenor of the Browsers' contentions on appeal indicate that they had some problems with the well drillers and equipment suppliers which prevented accomplishment of the necessary development work.

There have been numerous departmental decisions ruling that a claimant's failure to get a well drilled because he relied upon others or because his finances were inadequate, or because of other reasons where he should have been able to anticipate the delay or

where he could have done more than he did, is insufficient to demonstrate a lack of fault upon the entryman and an unavoidable delay in the construction of the irrigation works. See e.g. Paul I. Kochis, supra, and cases cited. See also Calvin L. Howard, A-31060 (March 17, 1970).

No reclamation development work was done on the subject entry during the 5-1/2 years of its existence. The Browers have failed to show to the satisfaction of the Secretary that their failure to reclaim the land was due, without fault on their part, to unavoidable delay in the cultivation and construction of irrigation works. Furthermore, they failed to make use of the first extension granted to them, and the request for the second extension of time was, therefore, properly denied.

[2] Furthermore, because the statutory life of the entry, including the extension that was granted, had expired so that no further efforts to develop could be undertaken, the cancellation of the entry was also proper. Elaine S. Stickelman, supra; Virgil H. Belisle, A-29954 (March 12, 1964); Bessie Brown, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

